

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

RANDAL CAREY,)	No. ED104278
)	
Respondent,)	Appeal from the Circuit Court
)	of Franklin County
vs.)	
)	Hon. Stanley D. Williams
DIRECTOR OF REVENUE,)	
)	Filed:
Appellant.)	March 28, 2017

The Director of Revenue appeals from the judgment reinstating the driving privileges of Randal Carey, which were suspended after his arrest for driving while intoxicated. The Director argues that the trial court erred in excluding from evidence the breath test results showing Carey's blood alcohol content was over the legal limit.

REVERSED AND REMANDED.

Division Three holds:

The relevant regulation, 19 CSR 25-30.051(4), requires annual certification of any breath alcohol simulators used to perform a maintenance check on an evidential breath analyzer. But to lay a proper foundation for admission of the breath test results at trial, the Director only need submit proof that the simulator was certified at the time of the relevant maintenance check—that is, the one within 35 days before the breath test was performed—since that is the only maintenance check that matters for purposes of whether the breath analyzer machine was working properly at the time of the breath test. It is not necessary, therefore, to submit proof of certifications from any other year for purposes of admissibility. Thus, here, the 2015 certification in effect at the time of the relevant maintenance check performed before Carey's breath test was sufficient, and the trial court erred in refusing to admit the results of that test into evidence.

Opinion by: Robert G. Dowd, Jr., J.
Angela T. Quigless, P.J. and Lisa S. Van Amburg, J., concur.

Attorney for Appellant: Rachel M. Jones

Attorney for Respondent: Zachary W. Rennick

<p>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</p>
